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DIGEST OF WEST VIRGINIA WATER POLLUTION LEGISLATION

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Digest of WATER POLLUTION CONTROL LEGISLATION

... West Virginia

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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I. GENERAL STATEMENT

The State Water Commission has the primary responsibility of controlling water pollution (Sec. 1405) [1/].

The Commission has been designated by statute as the Water Pollution Agency for the State for all purposes of the Federal Water Pollution Control Act. The Commission is empowered to cooperate with the U. S. Public Health Service and other agencies of the Federal Government, other States, interstate agencies and other interested parties in all matters relating to water pollution. It approves projects for which application for loans or grants under the Federal Act is made by any municipality or agency of the State or by any interstate agency; participates in proceedings under the Federal Act to recommend measures for abatement of water pollution originating in the State; gives consent, on behalf of the State, to requests by the Secretary of Health, Education, and Welfare to the Attorney General of the United States for the bringing of suits for abatement of such pollution; and consents to the joinder as a defendant in such suit of any person who is alleged to be contributing to the pollution, abatement of which is sought in such suit (Sec. 1409).

The Commission has the power to issue orders granting to applicants the right of eminent domain when the acquisition of the desired property is necessary for controlling the pollution of the waters of the State (Sec. 1406 (1)).

The State Department of Health exercises general supervision over drainage, water supply, excreta, garbage and refuse disposal throughout the State which affect the public health (Sec. 1273).

1/ Citations in this digest refer to the West Virginia Code of 1955, Annotated, and the 1957 Cumulative Supplement thereto, unless otherwise indicated.

II. ADMINISTRATIVE ORGANIZATION

State Water Commission

1. Composition and organization

The Commission consists of the Commissioner of Health, the Chairman of the Game and Fish Commission, and three members appointed by the Governor with the advice and consent of the Senate, for six-year terms, except as to those first appointed. The Director of the Division of Sanitary Engineering in the State Health Department performs such services as called on by the Commission. The College of Engineering of the West Virginia University is authorized to aid and assist the Commission in the study of questions connected with pollution of waters. The Commission elects a Chairman from among its members; it also elects a Secretary who need not be a member. The Commission meets at such times and places as agreed upon, or upon the call of the Chairman (Secs. 1402, 1403).

2. Powers and duties

a) Issuance of permits

A permit must be secured from the Commission before anyone can do any of the following acts if such acts would cause a material pollution of State waters:

1. Construct, install or operate a new sewer, disposal system or treatment works;

2. Extend, modify or add to new or existing disposal systems or treatment works;

3. Extend, modify or add to an industrial or commercial establishment or operate the same, or make any new outlet or add to the load of any existing outlet.

Anyone denied a permit or whose permit is revoked must be afforded a hearing upon written request filed with the Commission within 20 days

of receipt of the denial or revocation.

Applications for permits relating primarily to sewage must be submitted to the State Department of Health and must be approved by both the Commission and the Department (Sec. 1405).

b) Enforcement

The Commission is empowered to cite anyone causing pollution of State waters to appear and show cause why the Commission should not issue an order regulating such pollution. Any person affected by such pollution may intervene as a party in such proceeding. Hearings on the matter may be conducted by the Commission, any member thereof, or by any person who is authorized to take depositions. In such hearing, any Commissioner may issue subpoenas, administer oaths and cause the attendance of witnesses and the production of evidence and testimony, subject to the same conditions as in civil actions (Ibid).

If, after a full hearing, the Commission finds that there is pollution in State waters, it issues an order directing the polluter to cease such pollution, or enters an order denying a permit which is being sought. The polluter has 30 days within which to notify the Commission that he will comply with the order or that he will install some practical and reasonably available means which will control such pollution. If he does not comply with the order, the Commission may apply to the Circuit Court for an injunction against the polluter. Before the installation of corrective works by a polluter, against whom an order has been issued, he must submit, for the approval of the Commission, the plans describing the means of pollution abatement which he proposes to use. Thereafter the Commission enters an order approving or disapproving the proposed works. Any order of the Commission may, at any time after at least 20 days' notice in

writing to any person affected thereby and any intervening petitioner, and after a hearing, be modified or revoked by the Commission. The Commission must serve an attested copy of any order entered by it upon all affected persons in the same manner as writs or summons in civil actions, or by registered mail. (Sec. 1406).

An aggrieved party has the right to appeal an order of the Commission to the Circuit Court within 30 days after entry. The Court may affirm, modify or set aside in whole or in part the Commission's order. A further appeal to the State Supreme Court of Appeals may be taken by either party (Sec. 1407).

Anyone against whom an order of the Commission has been entered must, within 30 days, take steps to comply with such order. If the offender is a municipal corporation, the cost of compliance with the Commission's order may be paid out of funds on hand, or if none, then the necessary funds may be raised by the issuance of either direct obligation or revenue bonds; such bond issue to be approved by the State Sinking Fund Commission and the Attorney General (Sec. 1409 (2/7)).

Anyone who refuses to discharge any duty imposed by the Act, or to comply with a final order of the Commission, is guilty of a misdemeanor, punishable by a fine of not less than $25.00, nor more than $100.00 or imprisonment for not to exceed 90 days. Each day violation continues is a separate offense (Sec. 1409 (4/7)).

Anyone who fails or refuses to abate a polluted condition in compliance with a Commission order within the time fixed is subject to a penalty of $100.00 for each day that such pollution continues after the time so fixed. This may be recovered in a civil suit. Such penalty is in addition to that provided in Sec. 1409 (4/7). The Attorney General prosecutes the actions involving penalties (Sec. 1409 (5/7)).

c) Conduct of studies, investigations and research

The Commission is authorized to study questions arising in connection with stream flow and pollution of State waters and make reports and recommendations in respect thereto. It is empowered, in cooperation with the college of engineering at West Virginia University, to perform research, investigation and scientific experiments toward the discovery of economical and practical methods for treatment of industrial wastes and the control of stream pollution (Sec. 1408).

d) Cooperation with other public and private agencies

The Commission is authorized to cooperate in its investigations and research with public and private agencies and receive from them such funds as they may contribute as their share of the expense thereof; such contributed funds to be expended in accordance with the directions of the donor (Sec. 1408).

e) Administrative powers

The Commission is authorized to hold hearings, issue orders, permits, and subpoenas, administer oaths and examine witnesses (Secs. 1405, 1406). It is empowered to make reports and recommendations relating to water pollution (Sec. 1408). Any Commissioner, assistant or employees of the Commission has the right, at any reasonable time, to enter any premises while engaged in the performance of his duty (Sec. 1404).

3. Preservation of existing rights and remedies

The provisions of the Act are not to be construed to abridge or change any of the powers and duties of the State Department of Health. All existing laws or parts of laws of the State which are inconsistent with this Act are repealed (Sec. 1409(6/7)).

4. Severability clause

The Act contains a severability clause (Sec. 1409 (17)).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is a misdemeanor to deposit the carcass of any dead animal or other waste or putrid substances into or near any river, creek or other stream (Sec. 1388).

Anyone who knowingly throws any dead animal or other putrid or offensive matter into any well, cistern, spring, brook or branch of running water which is used for domestic purposes is guilty of a misdemeanor (Sec. 1387).

It is unlawful for anyone to catch or kill fish by the use of dynamite, explosives, poisonous drugs, electricity or lime (Secs. 2261, 2273).

Every mine and coal washery from which water is discharged or drained into any water in the State must be kept in a sanitary condition, and such water, while in the mine and on the premises of the mine owner or operator, must be kept free from pollution by human or animal excrement or substance deleterious to health (Sec. 2458).

It is unlawful for anyone to discharge sawdust or other matter deleterious to the propagation of fish into any waters of the State. Violation is a misdemeanor (Sec. 2262).

It is unlawful for anyone to poison any spring, well reservoir, conduit or pipe of water, with intent to kill or injure another person. Violation is a felony, punishable by imprisonment in the penitentiary for not less than 3 nor more than 18 years (Sec. 5922).

IV. INTERSTATE COMPACTS

West Virginia is a member of the Interstate Commission on the Potomac River Basin (Sec. 2777 (13) (14)).

West Virginia is a party to the Ohio River Valley Sanitation Compact (Sec. 2777 (15)-(20)).